

1 **Title 5. EDUCATION**

2 **Division 1. State Department of Education**

3 **Chapter 11. Special Programs**

4 **Subchapter 19. Charter Schools**

5 *Add Article 1.5 (commencing with Section 11963) to read:*

6 **Article 1.5. Classroom- and Nonclassroom-Based Instruction in Charter Schools.**

7 **§11963. Definition of Classroom-Based Instruction.**

8 (a) In accordance with the definition of classroom-based instruction specified in Education
9 Code section 47612.5(e)(1), and for purposes of identifying and reporting that portion of a
10 charter school's average daily attendance that is generated through nonclassroom-based
11 instruction pursuant to Education Code sections 47634.2(c) and 47612.5(e)(2), classroom-based
12 instruction in a charter school occurs only when all four of the following conditions are met.

13 (1) The charter school's pupils are engaged in educational activities required of those
14 pupils, and the pupils are under the immediate supervision and control of an employee of the
15 charter school who is authorized to provide instruction to the pupils within the meaning of
16 Education Code section 47605(l).

17 (2) At least 80 percent of the instructional time offered at the charter school is at the
18 schoolsite.

19 (3) The charter school's schoolsite is a facility that is used principally for classroom
20 instruction.

21 (4) The charter school requires its pupils to be in attendance at the schoolsite at least 80
22 percent of the minimum instructional time required pursuant to Education Code section
23 47612.5(a)(1).

24 (b) The requirement to be "at the schoolsite" is satisfied if either of the following
25 conditions is met.

26 (1) The facility in which the pupils receive instruction is:

27 (A) Owned, rented, or leased by the charter school principally for classroom instruction;

28 (B) Provided to the charter school by a school district pursuant to Education Code section
29 47614 principally for classroom instruction; or

30 (C) Provided to the charter school free-of-charge principally for classroom instruction
31 pursuant to a written agreement.

1 When not being used by the charter school for classroom instruction, the facility may be
2 rented, leased, or allowed to be used for other purposes (e.g., for evening adult classes not
3 offered by the charter school, local theater productions, or community meetings) and still be
4 deemed to be principally for classroom instruction.

5 (2) The charter school facility meets the criteria in paragraph (1) of subdivision (b) and the
6 pupils are on a field trip during which the pupils remain under the immediate supervision and
7 control of the employee of the charter school and are carrying out an educational activity
8 required of the pupils.

9 (c) The requirement to be “at the schoolsite” is not satisfied if the pupils are in a personal
10 residence (i.e., a dwelling), even if space in the residence is set aside and dedicated to
11 instructional purposes and/or the charter school rents or leases space in the residence for the
12 provision of instruction. As used in this subdivision, a personal residence shall not include a
13 facility that is licensed by a state or local government agency to operate as a facility in which
14 pupils not related to the facility’s owners are provided custodial care and supervision (e.g., a
15 licensed children’s institution or a boarding school).

16 (d) The definitions in this section are solely for the purpose of determining if a charter
17 school must submit a determination of funding request pursuant to Education Code section
18 47634.2.

19 NOTE: Authority cited: Sections 33031, 47612.5 and 47634.2, Education Code. Reference:
20 Sections 47605, 47612.5, and 47634.2, Education Code.

21 **§11963.1. Nonclassroom-Based Instruction in Charter Schools.**

22 This article does not change the requirement that nonclassroom-based instruction in charter
23 schools comply with the provisions of Article 5.5 (commencing with Section 51745) of Chapter
24 5 of Part 28 of the Education Code.

25 NOTE: Authority cited: Sections 33031 and 47612.5, Education Code. Reference: Article 5.5
26 (commencing with Section 51745) of Chapter 5 of Part 28; and Section 47612.5, Education
27 Code.

28 **§11963.2. Average Daily Attendance for Nonclassroom-Based Instruction in Charter**
29 **Schools.**

30 (a) A charter school may receive funding for nonclassroom-based instruction only if a
31 determination of funding is made pursuant to Education Code section 47634.2. A determination

1 of funding is a specific percentage approved by the State Board of Education for each affected
2 charter school by which the charter school's reported nonclassroom-based average daily
3 attendance must be adjusted by the Superintendent of Public Instruction prior to the apportioning
4 of funds based upon that average daily attendance. A determination of funding shall only be
5 approved by the State Board for a charter school if the charter school has submitted a request.

6 (1) For the 2002-03 fiscal year, a determination of funding request approved by the State
7 Board of Education shall be 80 percent, unless a greater or lesser percentage, is determined
8 appropriate by the State Board of Education in accordance with the provisions of Section
9 11963.4. In no case shall an approved determination of funding exceed 100 percent.

10 (2) For the 2003-04 fiscal year and each fiscal year thereafter, a determination of funding
11 request approved by the State Board of Education shall be 70 percent, unless a greater or lesser
12 percentage is determined appropriate by the State Board of Education in accordance with Section
13 11963.4. In no case shall an approved determination of funding exceed 100 percent.

14 (3) Beginning with the 2002-03 fiscal year, an approved determination of funding shall be
15 for at least one fiscal year, but shall be for not more than five fiscal years. A determination of
16 funding shall be subject to review each time a material change is made in the school's charter
17 with respect to non-classroom based instruction, each time the school's charter is renewed,
18 and/or in accordance with any conditions the State Board of Education may impose by regulation
19 at the time of the determination of funding request's approval. A material change in the school's
20 charter with respect to nonclassroom-based instruction is any significant change that affects the
21 level of resources devoted to nonclassroom-based instruction, the courses to be offered through
22 nonclassroom-based instruction, and/or the delivery of educational services to pupils receiving
23 nonclassroom-based instruction. The charter school shall notify the California Department of
24 Education no later than thirty (30) days after the material change is made.

25 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections
26 47634.2 and 51745.6, Education Code.

27
28 **§11963.3. Determination of Funding Request Forms and Calculations.**

29 (a) For purposes of submitting a determination of funding request, the California
30 Department of Education shall issue a form or set of forms to collect the information specified in
31 this subdivision. Unless otherwise indicated, charter schools submitting a determination of

1 funding request shall complete the form or forms in accordance with the definitions used in Part
2 II of the 2001 edition of the California School Accounting Manual (which can be obtained from
3 the California Department of Education web site at: www.cde.ca.gov/fiscal/sacs/csam). The
4 form or forms shall be developed by the California Department of Education in consultation with
5 the Advisory Commission on Charter Schools. The form or forms shall include all of the
6 following and, to the extent the form or forms include more than the following, the form or
7 forms shall require the approval of the State Board of Education and comply with applicable
8 provisions of the Administrative Procedure Act.

9 (1) The name, charter number, address, telephone number, fax number, and email address,
10 if any, for the charter school, and a contact person.

11 (2) The percentage requested by the school as its determination of funding.

12 (3) For the 2002-03 fiscal year and each fiscal year thereafter, the fiscal years for which the
13 determination of funding is requested, which shall not exceed five years.

14 (4) The effective term of the charter.

15 (5) For charter schools that operated in the prior fiscal year, all of the following:

16 (A) The school's total resources, including all federal revenue, with federal Public Charter
17 School Grant Program start-up, implementation, and dissemination grants separately identified;
18 all state revenue; all local revenue with in-lieu property taxes separately identified; other
19 financing sources; and the ending balance from the prior fiscal year..

20 (B) The school's total expenditures for instruction and related services, by object of
21 expenditure, which shall include all of the following:

22 1. Activities dealing with the interaction between teaching staff and students, without
23 regard to the instructional location or medium.

24 2. Services that provide administrative, technical, and logistical support to facilitate and
25 enhance instruction.

26 3. Services in direct support of students.

27 4. School-sponsored extra-curricular or co-curricular activities designed to provide
28 motivation and enjoyment and improvement of skills.

29 (C) The school's total expenditures for schoolsite and administrative site operations and
30 facilities, by object of expenditure, which shall include all of the following:

31 1. Activities concerned with securing and keeping open and working the physical plants,

1 grounds, and equipment necessary for the operation of the school.

2 2. Facility rents, leases, and utilities.

3 3. Facilities acquisition and construction.

4 (D) The school's total expenditures for administration and all other activities, by object of
5 expenditure, which shall include all of the following:

6 1. Activities concerned with establishing and administering policy for operating the entire
7 charter school, such as the governing board, director, and administrative staff.

8 2. Other general administration activities, such as payroll and accounting services, auditing
9 and legal services, property and liability insurance, personnel, charter-wide telephone service,
10 and data processing services.

11 3. Supervisorial oversight fees charged by the chartering authority.

12 4. Other expenditures not reported elsewhere, such as those for community services and
13 enterprise activities.

14 (E) Other outgo and other uses, including debt service payments and transfers.

15 (F) The excess (or deficiency) of revenues over expenditures calculated by subtracting the
16 total of subparagraphs (B), (C), (D), and (E), from the total resources reported pursuant to
17 subparagraph (A), and a list of the amount of reserves for: facilities acquisition or construction,
18 economic uncertainties, the amount required by the charter-authorizing entity, or other reserves.

19 (6) For charter schools that did not operate in the prior fiscal year, the revenue and
20 expenditure information required in paragraph (5) shall be provided using reasonable estimates
21 of current-year annualized revenues and expenditures.

22 (b) In addition to the form or forms prescribed pursuant to subdivision (a), a complete
23 determination of funding request shall also include the following information. Only a
24 determination of funding request that is complete may be acted upon by the State Board of
25 Education.

26 (1) A certification of the following:

27 (A) That the information provided is true and correct to the best of the ability and
28 knowledge of the individual authorized to do so by the charter school's governing board.

29 (B) That the charter school's nonclassroom-based instruction is conducted for and
30 substantially dedicated to the instructional benefit of the school's students.

31 (C) That the governing board of the charter school has adopted and implements conflict of

1 interest policies.

2 (D) That all of the charter school's transactions, contracts, and agreements are in the best
3 interest of the school and reflect a reasonable market rate for all goods, services, and
4 considerations rendered for or supplied to the school.

5 (2) The charter school's pupil-teacher ratio as calculated pursuant to Education Code
6 section 51745.6; and the pupil-teacher ratio of the largest unified school district in the county or
7 counties in which the charter school operates, as required by Section 11704.

8 (3) A listing of entities that received in the previous fiscal year (or will receive in the
9 current fiscal year) \$50,000 or more of the charter school's total expenditures identified pursuant
10 to subparagraphs (B), (C), (D), and (E) of paragraph (5) of subdivision (a), the amount received
11 by each entity; whether each of the contract payments is based on specific services rendered or
12 upon an amount per unit of average daily attendance or some other percentage; and an
13 identification of which entities, if any, have contract payments based on a per unit average daily
14 attendance amount or some other percentage.

15 (4) An identification of the members comprising the charter school's governing board (i.e.,
16 parent, teacher, etc.) and a description of how those members were selected; whether the
17 governing board has adopted and implemented conflict of interest policies and procedures; and
18 whether any of the governing board members are affiliated in any way with any of the entities
19 reported pursuant to paragraph (3) and if so, how.

20 (5) An explanation of all transfers reported pursuant to subparagraph (E) of paragraph (5)
21 of subdivision (a).

22 (6) A list and the amount of each of the other reserves reported pursuant to subparagraph
23 (F) of paragraph (5) of subdivision (a).

24 (7) The total square footage of the facilities of the charter school; the square footage that is
25 used for instruction and related services (as defined in subparagraph (B) of paragraph (5) of
26 subdivision (a)); and the percentage of the school's nonclassroom-based pupils that use the
27 instruction and related space and how frequently.

28 (8) The number of full-time equivalent employees who possess a valid teaching certificate,
29 permit, or other document equivalent to that which a teacher in other public schools would be
30 required to hold issued by the Commission on Teacher Credentialing.

31 (c) The California Department of Education shall perform the following using the resource

1 and expenditure data provided pursuant to subdivision (a).

2 (1) A calculation showing the charter school's total expenditures for salaries and benefits
3 for all employees who possess a valid teaching certificate, permit, or other document equivalent
4 to that which a teacher in other public schools would be required to hold issued by the
5 Commission on Teacher Credentialing as a percentage of the school's total public revenues. For
6 the purposes of this subdivision:

7 (A) "Employees" shall include special education instructors who possess a valid teaching
8 certificate, permit, or other document equivalent to that which special education teachers in non-
9 charter public schools would be required to hold issued by the Commission on Teacher
10 Credentialing, and who provide instruction to pupils of the charter school pursuant to a contract
11 with a public or private entity.

12 (B) "Employees" shall include individuals who possess a valid certificate, permit, or other
13 document equivalent to that which the individuals would be required to possess in a non-charter
14 public school, issued by the Commission on Teacher Credentialing, and who are employed by a
15 local education agency (LEA), provided all of the following conditions are met: the LEA is the
16 employer of all the charter school's staff; the governing board of the LEA is the governing
17 authority for the charter school (i.e., the charter school is not a corporate entity separate from the
18 LEA); and the LEA's employees are assigned exclusively to work at the charter school or, to the
19 extent that the LEA's employees are assigned to work at the charter school on a part-time basis,
20 the charter school pays for the services rendered on a documented, fee-for-service basis and not,
21 for example, on the basis of a fixed annual amount, fixed percentage of average daily attendance
22 revenue, or other basis that is not related to documented services actually rendered to the charter
23 school. Under no circumstances shall certificated employees of an LEA be considered
24 employees of a charter school for purposes of this subparagraph unless the charter school pays
25 for the services rendered by the LEA's employees on a documented, fee-for-service basis.

26 (C) The school's total public revenue is based on the amounts reported pursuant to
27 subparagraph (A) of paragraph (5) of subdivision (a) and equals the sum of: all federal revenue,
28 less any Public Charter School Grant Program start-up, implementation, and dissemination grant
29 funds; state revenue; and local revenue from in-lieu property taxes.

30 (2) A calculation showing the charter school's total expenditures on instruction and related
31 services as a percentage of the school's total revenues. For the purposes of this subdivision, the

1 school's total revenues does not include the ending balance from the prior fiscal year.

2 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections
3 47634.2 and 51745.6, Education Code.

4 **§11963.4. Evaluation of Determination of Funding Requests Regarding Nonclassroom-**
5 **Based Instruction.**

6 When a complete determination of funding request is received from a charter school, it
7 shall be reviewed by the California Department of Education and presented to the Advisory
8 Commission on Charter Schools, along with credible information pertaining to the request
9 obtained from any other source. The Advisory Commission shall develop a recommendation
10 pursuant to this section to the State Board of Education regarding the request, and that
11 recommendation shall be presented to the State Board of Education by the California Department
12 of Education. The following criteria shall guide the process of reviewing and developing a
13 recommendation on the request. The California Department of Education shall report any
14 difference of opinion between the California Department of Education and the Advisory
15 Commission as to the recommendation presented to the State Board of Education.

16 (a) For the 2002-03 fiscal year:

17 (1) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
18 11963.3 equals at least 35 percent but less than 50 percent, and the percentage calculated
19 pursuant to paragraph (2) of subdivision (c) of Section 11963.3 equals or exceeds 55 percent, the
20 Advisory Commission on Charter Schools shall recommend to the State Board of Education
21 approval of the request at 80 percent, unless there is a reasonable basis to recommend otherwise.
22 If the recommended percentage is lower than the requested percentage, the recommendation to
23 the State Board shall include the reasons justifying the reduction, and, if appropriate, describe
24 how any deficiencies or problems may be addressed by the charter school.

25 (2) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
26 11963.3 equals or exceeds 50 percent, the Advisory Commission on Charter Schools shall
27 recommend to the State Board of Education approval of the request at 100 percent (i.e., full
28 funding), unless there is a reasonable basis to recommend otherwise. The recommendation to the
29 State Board shall include the reasons justifying a percentage that is greater than 80 percent and,
30 if the recommended percentage is lower than the requested percentage, the reasons justifying the

1 reduction and, if appropriate, describe how any deficiencies or problems may be addressed by
2 the charter school.

3 (3) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
4 11963.3 is less than 35 percent, or the percentage calculated pursuant to paragraph (2) of
5 subdivision (c) of Section 11963.3 is less than 55 percent, the charter school's nonclassroom-
6 based instruction is not substantially dedicated to the instructional benefit of the students, and
7 the Advisory Commission on Charter Schools shall recommend to the State Board of Education
8 approval of the request at 70 percent, unless there is a reasonable basis to recommend otherwise.
9 The recommendation to the State Board shall include the reasons justifying a percentage that is
10 lower than 80 percent and, if the recommended percentage is lower than the requested
11 percentage, the reasons for the reduction and, if appropriate, describe how any deficiencies or
12 problems may be addressed by the charter school.

13 (b) For the 2003-04 fiscal year and each fiscal year thereafter:

14 (1) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
15 11963.3 equals at least 40 percent but less than 50 percent, and the percentage calculated
16 pursuant to paragraph (2) of subdivision (c) of Section 11963.3 equals at least 60 percent but less
17 than 70 percent, the Advisory Commission on Charter Schools shall recommend to the State
18 Board of Education approval of the request at 70 percent, unless there is a reasonable basis to
19 recommend otherwise. If the recommended percentage is lower than the requested percentage,
20 the recommendation to the State Board shall include the reasons justifying the reduction and, if
21 appropriate, describe how any deficiencies or problems may be addressed by the charter school.

22 (2) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
23 11963.3 equals or exceeds 50 percent, and the percentage calculated pursuant to paragraph (2) of
24 subdivision (c) of Section 11963.3 equals at least 70 percent but less than 80 percent, the
25 Advisory Commission on Charter Schools shall recommend to the State Board of Education
26 approval of the request at 85 percent, unless there is a reasonable basis to recommend otherwise.
27 The recommendation to the State Board shall include the reasons justifying a percentage that is
28 greater than 70 percent and, if the recommended percentage is lower than the requested
29 percentage, the reasons justifying the reduction and, if appropriate, describe how any
30 deficiencies or problems may be addressed by the charter school.

1 (3) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
2 11963.3 equals or exceeds 50 percent, the percentage calculated pursuant to paragraph (2) of
3 subdivision (c) of Section 11963.3 equals or exceeds 80 percent, and the charter school's pupil-
4 teacher ratio is equal to or less than the pupil-teacher ratio of the largest unified school district in
5 the county or counties in which the charter school operates as reported pursuant to paragraph (2)
6 of subdivision (b) of Section 11963.3, the Advisory Commission on Charter Schools shall
7 recommend to the State Board of Education approval of the request at 100 percent (i.e. full
8 funding), unless there is a reasonable basis to recommend otherwise. The recommendation to the
9 State Board shall include the reasons justifying a percentage that is greater than 70 percent and,
10 if the recommended percentage is lower than the requested percentage, the reasons justifying the
11 reduction and, if appropriate, describe how any deficiencies or problems may be addressed by
12 the charter school.

13 (4) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
14 11963.3 is less than 40 percent, or the percentage calculated pursuant to paragraph (2) of
15 subdivision (c) of Section 11963.3 is less than 60 percent, then the charter school's
16 nonclassroom-based instruction is not substantially dedicated to the instructional benefit of the
17 students, and the Advisory Commission on Charter Schools shall recommend that the State
18 Board of Education deny the request, unless there is a reasonable basis to recommend otherwise.
19 The recommendation to the State Board shall include the reasons justifying the denial and, if
20 appropriate, describe how any deficiencies or problems may be addressed by the charter school.
21 Denial of a determination of funding request by the State Board of Education shall result in no
22 funding being apportioned for average daily attendance identified by the charter school as being
23 generated through nonclassroom-based instruction pursuant to Education Code section
24 47634.2(c).

25 (c) The Advisory Commission on Charter Schools and/or the California Department of
26 Education may ask the charter school to provide additional information in order to make possible
27 a more detailed review or to develop a reasonable basis for a recommendation other than those
28 prescribed in subdivisions (a) and (b). With the consent of the Superintendent of Public
29 Instruction, the request for additional information shall be considered a reasonable inquiry to
30 which the charter school must respond pursuant to Education Code section 47604.3.

31 (d) Prior to a recommendation by the Advisory Commission on Charter Schools (that a

determination of funding request be denied or approved at a percentage lower than that requested) being forwarded to the State Board of Education, the affected charter school shall be given thirty (30) calendar days in which to amend its determination of funding request and/or to provide additional information in support of the request. Based upon consideration of the amended request or any additional information that may be provided, the Advisory Commission may modify its recommendation to the State Board.

(e) A reasonable basis for the Advisory Commission on Charter Schools to make a recommendation other than one that results from the criteria specified in subdivisions (a) and (b) may include, but not be limited to, the following: the information provided by the charter school pursuant to paragraphs (2) through (8), inclusive, of subdivision (b) of Section 11963.3, documented data regarding individual circumstances of the charter school (e.g., one-time expenses for facilities, acquisition of a school bus, acquisition and installation of computer hardware not related to the instructional program, special education charges levied on the charter school by a local educational agency, restricted state, federal, or private grants of funds awarded to the charter school that cannot be expended for instructor salaries, or contracted instructional services other than those for special education), the size of the charter school, and how many years the charter school has been in operation. The Advisory Commission on Charter Schools shall give charter schools with less than a total of one hundred (100) units of prior year second period average daily attendance or that are in their first year of operation serious consideration of full funding. For the purposes of paragraph (3) of subdivision (b), the information provided by the charter school pursuant to paragraph (2) of subdivision (b) of Section 11963.3 shall not be a reasonable basis for the Advisory Commission on Charter Schools to make a recommendation other than one that results from the criteria specified in paragraph (3) of subdivision (b) of Section 11963.3.

NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections 47604.3 and 47634.2, Education Code.

§11963.5. Submission and Action on Determination of Funding Requests Regarding Nonclassroom-Based Instruction.

(a) Not more than 90 days following the receipt of a complete determination of funding request, the California Department of Education shall present the request and the recommendation of the Advisory Commission on Charter Schools to the State Board of

1 Education in accordance with subdivision (a) of Section 11963.4. For the 2002-03 fiscal year
2 and thereafter, a determination of funding request that will take effect within the fiscal year in
3 which it is submitted must be submitted by a charter school not later than February 1. The State
4 Board of Education may grant an exception to this limitation for good cause.

5 (b) If, during the effective period of a determination of funding, a charter school wishes to
6 seek a higher or lower determination of funding, it shall do so by the filing of a new
7 determination of funding request. During the effective period of a charter school's determination
8 of funding, no more than one additional determination of funding request (which would replace
9 the determination of funding then in effect) may be submitted by the charter school in the same
10 fiscal year.

11 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections
12 47604.3 and 47634.2, Education Code.

13 **§11963.6. Termination of a Determination of Funding Regarding Nonclassroom-Based**
14 **Instruction.**

15 The State Board of Education may terminate a determination of funding if updated or
16 additional information requested by the California Department of Education and/or the Advisory
17 Commission on Charter Schools is not made available by a charter school within thirty (30)
18 calendar days or if credible information from any source supports termination. If the latter is the
19 case, the charter schools shall be given thirty (30) calendar days prior to the termination of
20 funding to provide additional information to support the school's determination of funding.

21 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Section
22 47634.2, Education Code.

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